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In The

# Supreme Court of the United States

October Term, 1980

No. 79-2047

HELEN H. SIMMONS,
*Petitioner,*

vs.

STATE OF IOWA,
*Respondent,*

and

STATE OF IOWA, IOWA CONSERVATION COMMISSION, and GERALD JAURON,
*Respondents on Petitioner's Counterclaim.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

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STATE OF IOWA, IOWA CONSERVATION COMMISSION, and GERALD JAURON,
*Respondents on Petitioner's Counterclaim.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

The petitioner, Helen H. Simmons, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Iowa Supreme Court entered in this proceeding on March 19, 1980.

## OPINION BELOW

The opinion of the Iowa Supreme Court reported as *State of Iowa v. Simmons,* 290 N. W. 2d 589, appears in the Appendix hereto.

## JURISDICTION

The judgment of the Iowa Supreme Court was entered on March 19, 1980. A timely petition for rehearing was denied en banc on April 17, 1980, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U. S. C. 1257(3).

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## QUESTIONS PRESENTED

The questions presented herein are a result of a direct conflict of the decision of the Iowa Supreme Court (Appendix D), with the decision of the United States Supreme Court in *State of Nebraska v. State of Iowa,* No. 17 Original, 406 U. S. 117, 31 L. Ed. 2d 733, 92 S. Ct. 1379, April 24, 1972 (Opinion), 409 U. S. 285, 34 L. Ed. 2d 522, 93 S. Ct. 889, January 8, 1973 (Decree), interpreting the Iowa-Nebraska Boundary Compromise, approved by the Congress of the United States on July 12, 1943, and hereafter referred to as the Compact. This Opinion and Decree involved the determination of ownership of Missouri River riverbed and adjacent land areas, ceded by Nebraska to Iowa's jurisdiction by the Compact and claimed by Iowa in the case of *State of Iowa,* Plaintiff, *v. Darwin Merritt Babbitt, et al.,* Equity No. 17433 in the District Court for Mills County, Iowa, and in the case of *State of Iowa,* Plaintiff, *v. Henry E. Schemmel, et al.,* Equity No. 19765 filed in the District Court of Fremont County, Iowa, filed on March 26, 1963. The U. S. Supreme Court found that the Babbitt and Schemmel lands were ceded riverbed and land areas formed in the State

of Nebraska before July 12, 1943, the Compact date, that there were titles to said ceded land and riverbed "good in" Nebraska on the Compact date, and that Iowa could not interpose her doctrine of state ownership to defeat said titles. The instant case also involves the ceded East Half of the cutoff channel and adjoining land area located at the California Bend on the Iowa side of the Missouri River and which is owned by the Petitioner herein (Appendix A). Petitioner owns approximately 300 acres of ceded land and water area located in Section 12, Township 78 North, Range 45 West and Section 7, Township 78 North, Range 46 West, Harrison County, Iowa. The Iowa Supreme Court in its opinion (Appendix D) concedes that the disputed area "laid wholly in Nebraska prior to 1938", that it was ceded to Iowa's jurisdiction by Nebraska by the 1943 Compact, and that the State of Iowa had no title to the disputed ceded riverbed and land area before 1949. The Iowa Supreme Court in its opinion (Appendix D) held that the 1943 Compact allowed the State of Iowa to interpose its doctrine of state ownership to divest the Petitioner of her ownership of said ceded area whose title was "good in" Nebraska on the Compact date, because of events occurring in 1949 and thereafter. Questions presented are:

1. Whether the divestment, by the Iowa Supreme Court in its opinion of Petitioner's ownership of the ceded East Half of the cutoff channel and adjoining land, titled in Nebraska on the date of the Compact, July 12, 1943, constitutes a violation of the Compact which is an agreement between the two states, approved by the U. S. Congress, a Federal question.

2. Whether the decision of the Iowa Supreme Court, divesting Petitioner's title, constitutes a taking of property by the State of Iowa without just compensation in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and the provisions of Article 1, Section 6, Iowa Constitution, a Federal question.

3. Whether the denial of a timely request for a jury trial on legal issues raised in a compulsory counterclaim filed in a quiet title action violates Petitioner's right to trial by jury guaranteed by the Seventh Amendment to the United States Constitution, a Federal question.

4. Whether the decision of the Iowa Supreme Court, divesting Petitioner's title, constitutes state action in violation of the United States Civil Rights Act, 42 U. S. C. § 1983, a Federal question.

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Nebraska-Iowa Boundary Compromise of 1943, Iowa Acts 1943, 50 G. A., CH. 306; Nebraska Laws, 1943, CH. 130; Act of Congress approved July 12, 1943, CH. 220, 57 U. S. Stat. at Large 494.

The Fifth, Seventh, and Fourteenth Amendments to the Constitution of the United States.

Act of Congress, August 4, 1846, CH. 82, 9 U. S. Stat. at Large 52.

The Iowa Constitution, Article 1, Section 6.

Enabling Act, Act of Congress, December 28, 1846, CH. 1, 9 U. S. Stat. at Large 117, admitting Iowa into the Union.

The United States Civil Rights Act, 42 U. S. C. § 1983.

The pertinent parts of the Nebraska-Iowa Boundary Compromise of 1943 (Iowa Acts 1943, 50 G. A., CH. 306), and (Nebraska Laws, 1943, CH. 130) are printed in Appendix C hereto.

The pertinent parts of the Fifth, Seventh and Fourteenth Amendments to the Constitution of the United States are:

> "Amendment V. No person shall be * * * deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation."
>
> "Amendment VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved * * * ."
>
> "Amendment XIV. Section 1. * * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The pertinent part of the Act of Congress, August 4, 1846, CH. 82, 9 U. S. Stat. at Large 52, defined Iowa's western boundary bordering Nebraska as the middle of the main channel of the Missouri River.

The pertinent part of Article 1, Section 6, Iowa's Constitution:

> "Section 6. All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."

The Enabling Act, Act of Congress, December 28, 1846, CH. 1, 9 U. S. Stat. at Large 117, admitted Iowa into the Union on an equal footing with the original States, approved the "Act for the Admission of the States of Iowa and Florida into the Union" approved March 3, 1845, and "an Act to Define the Boundaries of the State of Iowa" Approved August 4, 1846, the pertinent parts of which are:

> ". . . along the said northerly boundary line of the State of Missouri . . . until an extension of said line intersects the middle of the main channel of the Missouri River; thence, up the middle of the main channel of said Missouri River, to a point opposite the main channel of the Big Sioux River . . ."

The pertinent part of the United States Civil Rights Act, 42 U. S. C. § 1983:

> "Section 1983, Civil action for deprivation of rights: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

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## HOW THE FEDERAL QUESTIONS WERE RAISED

Petitioner first raised the federal questions present in this case, namely the violation of the 1943 Boundary Compact, the violation of the Fourteenth Amendment to the U. S. Constitution, the violation of the U. S. Civil Rights Act, 42 U. S. C. § 1983, and the violation of Article I, Iowa Constitution, in her Amendment to Answer and Counterclaim filed April 25, 1977, in the Harrison County, Iowa, District Court (Appendix F). The judgmen and Decree of the Harrison County, Iowa, District Court, the Trial Court, filed August 29, 1978, ruled that the ceded land in question was washed away by the river and that, notwithstanding the provisions of the Compact, Petitioner's title "good in Nebraska" on the Compact date was washed away and destroyed. The Trial Court did not directly rule on the other federal questions raised by Petitioner in her Amendment to Answer and Counterclaim (See pages 5 and 154 of the Appendix to Appeal from the Harrison County, Iowa, District Court to the Supreme Court of the State of Iowa).

Petitioner requested her Seventh Amendment right to a jury trial on the legal issues raised in the Amendment to Answer and Counterclaim by a Demand for Jury Trial filed April 25, 1977, in the Harrison County, Iowa, District Court, the Trial Court. Said Demand for Jury Trial was denied by the Trial Court by Order dated August 15, 1977. Petitioner filed a timely Motion for Rehearing on the jury trial issue which was overruled by the Trial Court by Order filed October 26, 1977 (See Record of Trial Court, Equity No. 21276, Harrison County, Iowa, District Court). Petitioner's timely applica-

tion for Interlocutory Appeal to the Iowa Supreme Court was denied November 9, 1977.

Petitioner again raised the violation of the 1943 Compact and her property rights under the 14th Amendment to the U. S. Constitution, Article 1, Iowa Constitution, and her civil rights under the U. S. Civil Rights Act, 42 U. S. C. § 1983, in her Amendment to Motion to Dismiss filed August 24, 1978 in the Trial Court which did not directly rule on any of the federal questions raised (See pages 151 and 154 of Appendix to Appeal from the Harrison County, Iowa, District Court to the Iowa Supreme Court).

Petitioner again raised all the federal questions present in this case by Notice of Appeal filed September 9, 1978, appealing from each order and ruling adverse to Petitioner in this case to the Iowa Supreme Court (See page 160 of the Appendix to Appeal from the Harrison County, Iowa, District Court to the Iowa Supreme Court).

After trial de novo, the Iowa Supreme Court, in No. 3-62628, in its decision (Appendix D herein) which is reported as *State of Iowa v. Simmons,* 290 N. W. 2d 589 (1980), ruled that under the 1943 Compact Petitioner had no title and ownership to the ceded land in question, and title vested in the State of Iowa, and that Petitioner's right to a jury trial had not been violated. The Iowa Supreme Court did not rule directly on the other federal questions presented. By timely Petition for Rehearing filed April 14, 1980, Petitioner again raised the federal question of violation of the 1943 Compact, and violations of Petitioner's constitutional rights. Said Petition for

Rehearing was denied en banc on April 17, 1980, and thus the Iowa Supreme Court did not rule on the federal questions raised (See Appendix E herein).

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## STATEMENT OF THE CASE

The Missouri River throughout its history has been restless and has moved slowly and imperceptibly easterly and westerly, changing the boundary line between the states of Iowa and Nebraska. Sometimes the river moved avulsively and suddenly, carving a new bed in either state, leaving Nebraska land east of the river and Iowa land west of the river, creating serious title and jurisdictional problems for both states. Complicating the problem is the common law of Iowa to the extent that the State of Iowa owns the riverbed from the ordinary high water mark to the middle of the channel, and the common law of Nebraska where the riparian owner owns the riverbed to the middle of the channel.

In the late 1930's the U. S. Corps of Engineers embarked upon a major program to stabilize the river. In 1938-1939, the U. S. Corps of Engineers, as part of its stabilization program, cut a new river channel entirely through the ceded land which was then located in the State of Nebraska, termed the "California Cutoff". The United States acquired an easement by condemnation from private Nebraska landowners for the new cutoff channel. The original river then was channelled into this new cutoff channel, constituting a man-made avulsion. Prior to this 1938 relocation, the original river

flowed approximately one mile east of the new cutoff channel. The boundary between Nebraska and Iowa was located in the middle of this original channel which was abandoned by the California Cutoff. The boundary between the two states remained in that location until the 1943 Compact established a permanent boundary between Nebraska and Iowa in the middle of the cutoff channel located west of the original channel (See Appendix A hereto). Consequently, the land in dispute which petitioner claims, was titled in Nebraska at the time of the Compact, was located east of the new cutoff channel, and was part of the State of Nebraska (See Appendix B hereto). Title to the riverbed in the cutoff channel did not change with the 1938 relocation, because said relocation was a man-made avulsion. Iowa admits that it had no title to the ceded land in dispute and no title to the east half of the cutoff river channel up to 1949. Beginning with a spring flood in 1949, the flood waters of the river broke out of the designed cutoff channel and proceeded eastward, and continued its breakout until the disastrous 1952 flood when it overflowed the ceded area in dispute. The river waters stayed in this location until 1958 when the United States Corps of Engineers put the river back into the 1938 cutoff channel, and the land in question reemerged. The river has remained in the cutoff channel continuously since.

When the river broke out eastward from the cutoff channel in 1949-1952, it never reached the abandoned, original Missouri River channel located approximately one mile east of the permanent boundary line in the center of the cutoff channel established by the 1943 Compact (See Appendix A).

The State of Iowa filed an action in equity to quiet title to the land involved in itself on March 24, 1965. Petitioner and her deceased husband filed an answer denying Iowa's allegation and affirmatively alleging that they were the owners of the land involved. On October 10, 1966, by stipulation of the parties, the case was continued until after the decision of *State of Nebraska v. State of Iowa,* Original No. 17, 406 U. S. 117, 31 L. Ed. 2d 733, 92 S. Ct. 1379 (1972), (Opinion); 409 U. S. 285, 34 L. Ed. 2d 522, 93 S. Ct. 889 (1973), (Decree).

On March 16, 1977, the State of Iowa amended its petition and described the property in question as owned by the State of Iowa as an abandoned channel of the Missouri River. On April 25, 1977, petitioner filed an amended answer denying the allegations of the amended petition of the State of Iowa. On that date petitioner, as third party plaintiff, filed a compulsory counterclaim against the State of Iowa, the Iowa State Conservation Commission, and Gerald Jauron, individually, and as an employee of the Iowa State Conversation Commission, an agency of the State of Iowa. The counterclaim alleged the petitioner to be the record titleholder and successor in interest of the Nebraska titleholder by adverse possession; and that the disputed land was ceded to Iowa's jurisdiction by the 1943 Compact, and the claim of the State of Iowa was in violation of the said Compact and the petitioner's rights under the United States Constitution, by taking her property without due process of law, and in violation of her civil rights. The State of Iowa filed a reply generally denying the allegations. No appearance or pleadings were filed on behalf of Gerald Jauron, and a default judgment was entered

against him on petitioner's counterclaim on April 14, 1978. Also, no pleadings were filed by the Iowa Conservation Commission.

Upon filing of the counterclaim, the petitioner demanded trial by jury on all issues which the Trial Court denied, claiming that the suit in equity was filed first and should be tried first without a jury trial and, therefore, petitioner was not entitled to a trial by jury.

Trial of the case was commenced on April 18, 1978, without a jury, to the Harrison County District Court of Iowa, and on August 29, 1978, said Court quieted title to the ceded land involved in the State of Iowa.

On September 9, 1978, petitioner filed a notice of appeal to the Iowa Supreme Court, and the case was tried de novo on appeal. On March 19, 1980, the Iowa Supreme Court filed its opinion and judgment affirming the trial court. The opinion held that under the terms of the 1943 Compact and the opinion of *Nebraska v. Iowa,* No. 17 Original, 406 U. S. 117, 31 L. Ed. 2d 733, 92 S. Ct. 1379 (1972), the provision that Iowa must recognize titles "good in Nebraska'' at the time of the 1943 Compact, does not apply to events occurring subsequent to the Compact date, July 12, 1943. The Iowa Supreme Court held that even though Iowa had no title to the disputed area until 1949, that when the river temporarily overflowed the ceded land in question, it washed away and destroyed the "good" Nebraska title, that Iowa common law applies, and that Iowa is the owner of the land in question as a bed of the Missouri River (See Appendix D). Petitioner's petition for rehearing in the Iowa Supreme Court was denied on April

17, 1980; petitioner files this petition for writ of certiorari within ninety days of April 17, 1980.

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## REASONS FOR GRANTING THE WRIT

The Iowa Supreme Court's decision is in error, because it conflicts with the 1943 Compact and with the decision of this Court in *State of Nebraska v. State of Iowa,* No. 17 Original, interpreting the 1943 Compact, and divests petitioner's title "good" in Nebraska on the Compact date by the Iowa court's application of its subsequent events theory in violation of petitioner's Fifth, Seventh and Fourteenth Amendment rights under the U. S. Constitution and her civil rights under 42 U. S. C. § 1983.

### I. Conflict of Authorities.

The decision of the Iowa Supreme Court is in direct conflict with the U. S. Supreme Court's decision in *State of Nebraska v. State of Iowa,* No. 17 Original, 406 U. S. 117, 31 L. Ed. 2d 733, 92 S. Ct. 1379, April 24, 1972 (Opinion), 409 U. S. 285, 34 L. Ed. 2d 522, 93 S. Ct. 889, January 8, 1973 (Decree), as to the proper interpretation of Sections 2 and 3 of the Nebraska-Iowa Boundary Compact. In its Opinion in *Nebraska v. Iowa, supra,* this Court stated as follows:

> "The Special Master construed the word 'cedes' in § 2 as meant by the States to describe all areas formed before July 12, 1943, regardless of their location with reference to the original boundary, whose 'titles, mortgages, and other liens' were at the date of the Compact 'good in' the ceding State, and ruled

> that, under § 3, the other State is bound to recognize such 'titles, mortgages, and other liens' to be 'good in' its State and not to claim ownership in itself."

In its Decree in *Nebraska v. Iowa, supra,* this Court stated:

> "As to areas formed before July 12, 1943, Sections 2 and 3 of the Compact limit the State of Iowa to contesting with private litigants in the State or Federal Courts the question whether the private claimants can prove title 'good in Nebraska' and when private litigants prove such title, Iowa cannot interpose Iowa's doctrine of state ownership as defeating such title.
>
> ". . . ownership of . . . areas . . . claimed by Iowa to be state owned by Iowa because allegedly formed wholly on the Iowa side of the Compact boundary after the Compact date . . . shall be determined by the law of the State in which they are found to have formed . . . Claimants of title to these areas as against Iowa may have the opportunity to show title 'good in Nebraska' on the Compact date."

The Iowa Supreme Court agreed that Iowa had no claim before 1949 when the river broke out of the cut-off channel eastward, acknowledging the "good" Nebraska title up to 1949. In no part of its decision does the Iowa Supreme Court hold that the disputed land formed in Iowa after the Compact date, July 12, 1943. Nevertheless, the Iowa Supreme Court decided that subsequent movement of the waters of the ceded river over the ceded land permitted the State of Iowa to divest the private title to the ceded disputed area that was "good in" Nebraska on the Compact date.

The factual situation in this case is identical to that in *Nebraska v. Iowa, supra,* involving Nottleman Island

owned by Darwin Merritt Babbitt and Schemmel Island owned by Henry E. Schemmel, et al., a case decided adversely to the State of Iowa. All three cases, including this case, involve ceded riverbed and ceded land formed in Nebraska prior to the Compact date. If the Iowa Supreme Court decision in this case is allowed to stand, both Schemmel and Babbitt will be divested of their titles which were "good in" Nebraska on the date of the Compact should the Missouri River ever temporarily move over the adjoining ceded land. Additionally, the ownership of approximately 14,000 acres of land along the Missouri River, ceded by Nebraska is in jeopardy and susceptible of divestment by the State of Iowa, if the Iowa Supreme Court's "subsequent event" theory is allowed to stand because the Iowa Supreme Court ruled:

> "The State's claim rests exclusively on events occurring *after the Compact date.*" (Emphasis added.)

*Tyson v. State of Iowa,* 283 F. 2d 802 (8th CCA 1960), cited by the Iowa Supreme Court as support for its decision in this case, is not applicable to the facts in this case. In *Tyson,* ceded riverbed and ceded land were not involved, and Iowa owned the east half of the bed of the Missouri River at the time of the Compact, which bed was part of the original Missouri River forming Iowa's western boundary when Iowa was admitted into the Union. The disputed land in *Tyson* formed in Iowa after the Compact date on Iowa owned river bed; it was not part of Nebraska on the Compact date. *Tyson* was cited by this Court in *Nebraska v. Iowa, supra,* on the issue of accretions to Nebraska riparian rights crossing the Compact boundary line into Iowa after the Compact date, an issue not present in the instant case. Ceded

land was not involved in the *Tyson* case. At page 806 of *Tyson* the Eighth Circuit Court of Appeals stated as follows:

> "In 1943 when the permanent boundary was established, the river at the point here in controversy flowed approximately in the designed channel specified in the Compact."

This shows that Iowa owned the east half of the Missouri River bed at the time of the Compact and that the pre-compact boundary line coincided with the permanent boundary line established by the Compact. In the instant case two river channels are involved. The pre-compact boundary line was in the center of the abandoned, original channel one mile east of the cutoff river channel in Nebraska. The Compact moved the pre-compact boundary line and permanently established it in the center of the cutoff river channel whose bed Iowa did not own (Appendix A). At page 183 of the *Report of Special Master,* No. 17 Original, *Nebraska v. Iowa, supra,* Judge Joseph P. Willson states that "good titles to Nebraska lands which Iowa agreed to recognize as good in Iowa became good Iowa titles." Petitioner's good Iowa title, formerly a good Nebraska title, is protected by the Compact from attack by Iowa. Iowa is entitled to apply her state law in Tyson-type areas involving accretion to river beds owned by her on the Compact date. Iowa is not entitled to apply her state law to ceded river beds not owned by her on the Compact date. This Court in *Nebraska v. Iowa, supra,* held that Iowa *did not own ceded river beds* at Schemmel and Nottleman islands.

## II. Necessity for Interpretation of Section 4 of the 1943 Nebraska-Iowa Boundary Compact.

The Iowa Supreme Court has construed the 1943 Compact as allowing the State of Iowa, subsequent to the date of the Compact, to divest title "good in" Nebraska on the Compact date, July 12, 1943, to ceded riverbed and ceded land because of events occurring subsequent to July 12, 1943. As stated by the Iowa Supreme Court in its decision, Appendix D hereto, "The State's claim rests exclusively on events occurring after the compact date." It is necessary for this Court to determine whether or not the 1943 Compact permits the State of Iowa the right to claim ownership of the ceded East Half of the cutoff channel and adjoining land whose title was "good in" Nebraska on the Compact date.

The case of *Petty v. Tennessee-Missouri Bridge Commission,* 359 U.S. 275, 3 L.Ed. 2d 804, 79 S.Ct. 785 (1959) states that the construction of a compact sanctioned by Congress under Article 1, Section 10, clause 3 of the U. S. Constitution presents a federal question, citing *Delaware River Joint Toll Bridge Com. v. Colburn,* 310 U.S. 419, 84 L.Ed. 1287, 60 S.Ct. 1039 (1939). Additionally, *Petty, supra,* states that the meaning of a compact is a question on which the U.S. Supreme Court has the final say, citing *West Virginia ex rel. Dyer v. Sims,* 341 U.S. 22, 28, 95 L.Ed. 713, 722, 71 S.Ct. 557 (1950).

The Iowa Supreme Court's decision in this case is in direct conflict with the statement of the Special Master in *Nebraska v. Iowa, supra,* Honorable Joseph P. Willson. In the *"Report of the Special Master,"* at page 86 Judge Willson states:

> "Section 4 provided a five year limitation for the assertion of rights of any liens or claims arising out of taxation of the lands by the states or their authorized governmental subdivisions and agencies. This constituted a clear limitation upon such claims arising from the governmental authority of the states and complements Section 3 which was a clear recognition of existing private claims. *There is nothing in the Compact reserving the right of either state to make additional claims of title under any other doctrine of sovereignty. Nothing preserves to the states the right to make any further claims and,* as *the Compact* was intended to settle all problems along the border, it *is to be construed to include all claims made by either state which might be asserted under any common law claim of sovereign ownership of beds or abandoned beds of the Missouri River, especially since Iowa had not claimed these areas theretofore.*" (Emphasis added.)

It is clear that the Special Master's construction of Section 4 of the 1943 Compact is that the only limitation upon Iowa's obligation under Section 3 to honor forever the "good" Nebraska title to ceded riverbed and ceded land was one only, that one relating to taxation for a period of four to five years, from 1943 to 1948. It is necessary for this Court to decide the correctness of the Iowa Supreme Court decree that the Compact reserves the right of Iowa to claim title under its state ownership doctrine with its "subsequent event" theory.

## III. Effect of the Decision Below on the Ownership of Ceded Riverbed and Ceded Land Whose Titles Were "Good in" Nebraska on the Compact Date.

As previously stated approximately 14,000 acres of land and riverbed were ceded by the State of Nebraska to Iowa's jurisdiction under the terms of the 1943 Ne-

braska-Iowa Boundary Compact. Titles to these ceded lands were "good in" Nebraska on the Compact date. It is obvious that one of the purposes of the Compact was to protect private titles to ceded lands from attack by the receiving state; otherwise Section 3 is meaningless. If the Iowa Supreme Court's interpretation of the Compact and its decision in this case are upheld, the owners of titles "good in" Nebraska to approximately 14,000 acres of ceded land stand to lose those "good" titles to the State of Iowa whenever the Missouri River temporarily overflows adjoining ceded lands. The State of Iowa will be able to garner a windfall of thousands of acres of ceded land, and the 1943 Compact which expressly guaranteed titles "good in" Nebraska on the Compact date will become the instrument of their destruction by the State of Iowa.

If it were not for the Compact, Iowa would not be in a position to attack petitioner's title which was good in Nebraska on July 12, 1943. But for the Compact, the disputed ceded riverbed and ceded land would still be in Nebraska. At page 84 of the Report of the *Special Master, Nebraska v. Iowa, supra,* Judge Willson states as follows:

> "Section 3 was intended to protect the rights of private property claimants against the claims of either state and is a broadly phrased clause which should be liberally construed to effect this purpose. *As such, neither State should be able to attack any private titles or claims emanating from the other State as of the date of the Compact."* (Emphasis added.)

## IV. Constitutional Violations.

1. At the time Petitioner filed her Counterclaim she requested a trial by jury which was denied by the Trial Court, and said denial was upheld by the Iowa Supreme Court on interlocutory appeal. The Trial Court tried the equitable issues first. The Iowa Supreme Court in its decision in this case held that such denial was not error, a finding which is in conflict with this Court's holding in *Beacon Theaters, Inc. v. Westover,* 359 U. S. 500, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959) that the defendant's demand for a jury trial on a legal counterclaim, prior to consideration of the plaintiff's claim for equitable relief, was improperly denied. The Iowa Supreme Court's holding on this issue conflicts, also, with its own prior decisions in *Morningstar v. Myers,* 255 N. W. 2d 159 (Iowa 1977); *Conrad v. Dorweiler,* 189 N. W. 2d 537 (Iowa 1971); and *Folkner v. Collins,* 91 N. W. 2d 545 (Iowa 1958) cited in 17 *A. L. R.* 3rd 1321, 1350. It is for this Court to determine whether or not petitioner's right to a jury trial under the Seventh Amendment, U. S. Constitution, has been violated.

2. The Iowa Supreme Court's decision in this case, unilaterally altering the terms of Section 3 of the 1943 Compact to permit Iowa's divestment of title to ceded riverbed and lands "good in" Nebraska on the Compact date, by the Iowa Court's own admission, constitutes a taking of private property for public use without just compensation and deprives petitioner of her right to due process, conflicting with the provisions of the Fifth and the Fourteenth Amendment to the U. S. Constitution, and Article 1 of the Iowa Constitution.

3. The Iowa Supreme Court's decision denies the petitioner the protection of Sections 614.17, 614.22, 614.1(5), 448.3, 448.15 and 448.16, Iowa Code Annotated, statutes of limitations which are applicable in this case and which have been accorded to other property owners within the State of Iowa. This denial deprives petitioner of her right to equal protection of the laws guaranteed by the Fourteenth Amendment to the U. S. Constitution.

## V. Civil Rights Violation.

The Iowa Supreme Court's decision divesting petitioner's title to the land involved constitutes State Action in violation of the United States Civil Rights Act, 42 U. S. C. § 1983, and petitioner's rights thereunder. Said Court's decision is in direct conflict with this Court's decision in *Lynch v. Household Finance Corporation,* 405 U. S. 538, 31 L. Ed. 2d 424, 92 S. Ct. 1113, reh den 406 U. S. 911, 31 L. Ed. 2d 822, 92 S. Ct. 1611 (1972): "Rights in property are basic civil rights;" and in *Joy v. Daniels,* 479 F. 2d 1236 (1973), 4th CCA: "State judges are bound by the due process clause of the Fourteenth Amendment."

## V. Conclusion

Petitioner is the record owner and successor in interest to the Nebraska riparian owner on the Compact date, of the disputed ceded riverbed and ceded land involved in this case, and unless this Court takes jurisdiction and grants certiorari, it is respectfully submitted that the Iowa Supreme Court's decision, unilaterally altering the terms of the 1943 Nebraska-Iowa Boundary Compact, will permit Iowa to divest petitioner's title in violation of her constitutional rights and civil rights.

Under the Iowa Supreme Court's decision owners of ceded riverbed and ceded land, approximating 14,000 acres, will be divested by Iowa of their titles which were "good in" Nebraska on the Compact date, whenever the Missouri River water temporarily flows over their ceded lands. As a further result of the Iowa Supreme Court's decision, no owner of ceded land can with any degree of safety or assurance of stability develop and improve his land, because he is faced with the possibility of divestment of his title by the State of Iowa. The Nebraska and Iowa Legislatures and the Congress of the United States did not intend to give Iowa this right and a windfall of thousands of acres of ceded land.

It is therefore respectfully submitted that this petition for writ of certiorari should be granted, and counsel be permitted to file their respective briefs on the questions raised herein.

Respectfully submitted,

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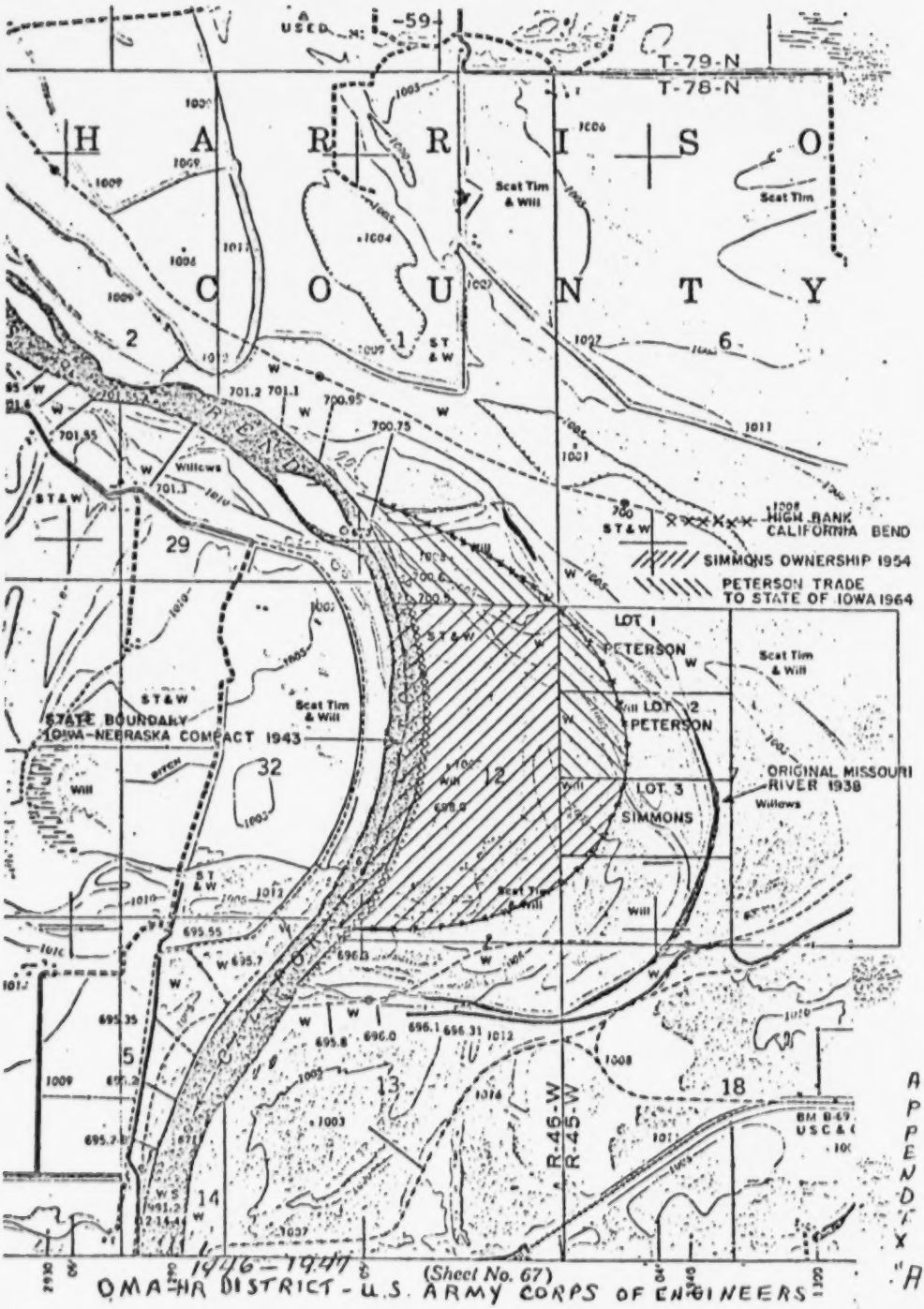
# APPENDIX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HARRISON COUNTY
HIGH BANK CALIFORNIA BEND
SIMMONS OWNERSHIP 1954
PETERSON TRADE TO STATE OF IOWA 1964
LOT 1 PETERSON
LOT 2 PETERSON
LOT 3 SIMMONS
ORIGINAL MISSOURI RIVER 1938
STATE BOUNDARY IOWA-NEBRASKA COMPACT 1943
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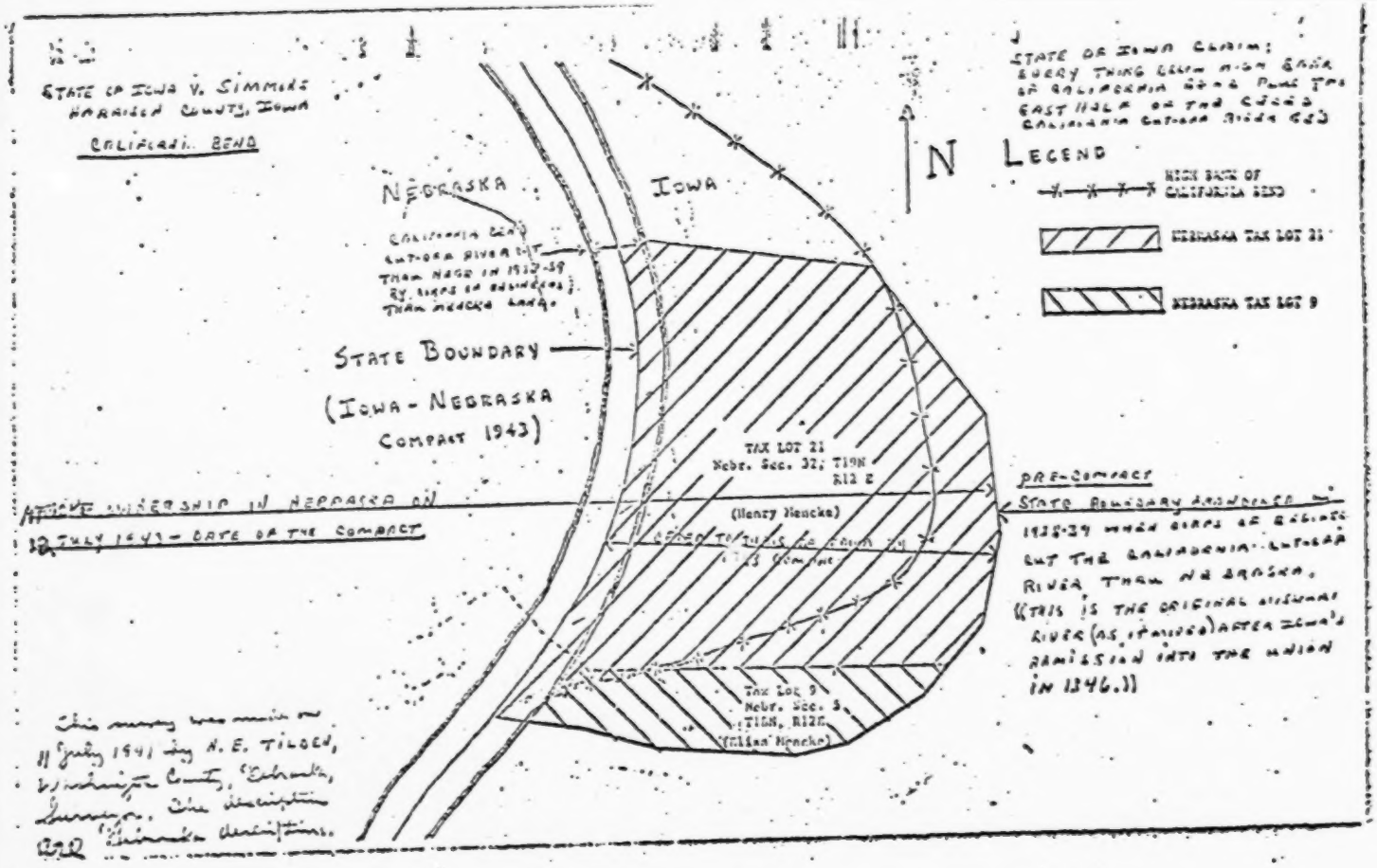
OMAHA DISTRICT - U.S. ARMY CORPS OF ENGINEERS
APPENDIX "A"

App. 2




APPENDIX 8

## APPENDIX C

1943 NEBRASKA-IOWA BOUNDARY COMPACT

Iowa Acts 1943, 50 G. A., CH. 306:

"Section 2. The State of Iowa hereby cedes of the State of Nebraska and relinquishes jurisdiction over all lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska."

"Section 3. Titles, mortgages, and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgments shall be accorded full force and effect in Iowa."

"Section 4. Taxes for the current year may be levied and collected by Nebraska or its authorized governmental subdivisions and agencies on lands ceded to Iowa and any liens or other rights accrued or accruing, including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section: *Provided,* that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred."

Nebraska Laws 1943, CH. 130:

"Section 2. The State of Nebraska hereby cedes of the State of Iowa and relinquishes jurisdiction over all lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa."

"Section 3. Titles, mortgages, and other liens good in Iowa shall be good in Nebraska as to any lands Iowa may cede to Nebraska and any pending suits or actions concerning said lands may be prosecuted to final judgment in Iowa and such judgments shall be accorded full force and effect in Nebraska."

"Section 4. Taxes for the current year may be levied and collected by Iowa or its authorized governmental subdivisions and agencies on lands ceded to Nebraska and any liens or other rights accrued or accruing, including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section: *Provided,* that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred."

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## APPENDIX D

IN THE SUPREME COURT OF IOWA

3

62628

STATE OF IOWA,

*Appellee,*

vs.

HELEN H. SIMMONS,

*Appellant.*

(Filed March 19, 1980)

Appeal from Harrison District Court—J. L. Larson, Judge.

Helen Simmons appeals from decree quieting title in the State of Iowa. AFFIRMED.

Raymond E. Pogge of Pogge, Root & Steege, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, and Bennett Cullison, Jr., of Harlan, for appellee.

Considered by LeGrand, P. J., and Uhlenhopp, McCormick, Allbee, and McGiverin, JJ.

LeGrand, J.

This is the latest in a long line of cases dealing with riparian titles along the Missouri River. It involves a suit to quiet title to land which the State of Iowa claims as part of the riverbed. Originally there were a number of defendants, but there remains only one. She is Helen Simmons, the appellant, who challenges the State's title and asserts she owns the land in dispute by virtue of several quitclaim deeds from Harrison County, Iowa, executed and delivered to her and her now deceased husban in 1954. The trial court found for the State and we affirm.

I. Prior to 1938, the land in question lay wholly in Nebraska. In that year, the United States Corps of Engineers undertook the sizeable task of stabilizing the unpredictable and capricious Missouri River. As a result of this man-made avulsion, the river was moved to the west and thereafter the disputed area lay on the Iowa side of the river. This anomaly—land within the borders of one state but actually being part of another —led to the adoption of a compact between Nebraska and Iowa which fixed "the middle of the main channel of the Missouri River" as established by United States engineers' office as the new and permanent boundary line between the two states. *See Nebraska v. Iowa,* 406 U. S. 117, 92 S. Ct. 1379, 31 L. Ed. 2d 733, 736 (1972). This compact was approved by the Congress of the United States on July 12, 1943, which is hereafter referred to as the compact date.

The compact terms are reflected in identical statutes enacted by each state. The Iowa statute provides in part as follows:

> Sec. 2. The State of Iowa hereby cedes to the State of Nebraska and relinquishes jurisdiction over all lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska.
>
> Sec. 3. Titles, mortgages, and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgment shall be accorded full force and effect in Iowa.

Both statutes are set out at pages lxxv and lxxvi, Iowa Code 1979.

In an action brought to construe and enforce this compact, the Supreme Court said in *Nebraska v. Iowa,* 406 U. S. at 120, 92 S. Ct. at —, 31 L. Ed. 2d at 736-37:

> The fixing of the permanent boundary by Compact resulted in some riparian lands formerly in each State being located within the other State. This created the problem of the effect to be given by the new State to titles, mortgages, and other liens that had arisen under the laws of the other State. Sections 2 and 3 of the Compact were designed to solve this problem. Under § 2 each State "cedes" to the other State "and relinquishes jurisdiction over" all such lands now located within the Compact boundary of the other. Under § 3, "[t]itles, mortgages, and other liens" affecting such lands "good in" the ceding State "shall be good in" the other State.

In 1949 the Missouri River once again broke out of its channel and began to spill over its banks. This overrun was gradual, continuing from 1949 to 1954, and eventually extending approximately one mile east of the

"stabilized" channel as established by the Corps of Engineers some ten years earlier. By July, 1954, the river had extended eastward far enough to destroy that part of the disputed land which had originally been in Nebraska but which became part of this state by the terms of the compact. The river stayed in that condition until 1959, when the United States Corps of Engineers again brought the Missouri under control. They restored the channel to its approximate 1938 location, where it has remained since.

We have, then, this factual situation. The land to which the State claims title was once part of the state of Nebraska. The compact ceded it to Iowa on the condition that then existing titles should be recognized and enforced under provisions of Nebraska law.

The State's claim rests exclusively on events occurring after the compact date. The State concedes it had no title to this land before then but says the action of the river between 1949 and 1954 completely eroded and washed the land away, allowing the river to take over where land had once been.

Two important questions are thus raised: (1) What was the nature of the action of the river between 1949 and 1954? (2) What is the effect of the compact on events affecting real estate titles which occur after the compact date?

Our review is de novo. In reviewing this matter, we recognize the rule that one seeking to quiet title must do so on the strength of his own title and not rely on the weakness of another's. *Wilcox v. Pinney,* 250 Iowa 1378, 1381, 98 N. W. 2d 720, 722 (1959).

II. In considering the first question, we point out that if the action of the river amounted to an avulsion —a sudden and perceptible change in the channel which cuts off a body of land—the title of riparian owners would not be affected. *Jeffery v. Grosvener,* 261 Iowa 1052, 1063, 157 N.W. 2d 114, 122 (1968); *Payne v. Hall,* 192 Iowa 780, 783, 185 N.W. 912, 914 (1921). Similarly title is unaffected if the overflow is temporary so that the submerged land reappears within a reasonable time. But if it was a gradual erosion, title would be lost and new title to the riverbed would vest in the state. *Grosvener,* 261 Iowa at 1063, 157 N.W. 2d at 114. We quote from *Wilcox v. Pinney,* 250 Iowa at 1382-83, 98 N.W. 2d 723:

> Right or wrong, it is well established that lands of a riparian owner are as subject to being lost by the gradual process of erosion by the river as they are of being added to by the process of accretion. We said in Payne v. Hall, 192 Iowa 780, 783, 185 N.W. 912, 914: "Where the lands of a riparian owner are removed by the gradual process of erosion by the river, the land being no longer capable of identification, but having been carried away entirely, and the river occupies the identical space formerly occupied by the lands of the riparian owner, the title to the land so occupied by the bed of the river passes from the owner of the land to the state."

*See also Rupp v. Kirk,* 231 Iowa 1387, 1391, 4 N.W. 2d 264, 265 (1942). This quoted language later formed the cornerstone for *Tyson v. Iowa,* 283 F. 2d 802, 807 (8th Cir. 1960).

We believe the evidence compels the conclusion that the land in dispute was lost by erosion. The action of

the river between 1949 and 1954 was gradual. It extended bit by bit until it occupied the whole area which Mrs. Simmons claims. All vegetation was destroyed. There was no sign of growth or trees. The land was no longer capable of identification. It was "carried away entirely" and the river then occupied the "identical space formerly occupied by the lands of the riparian owner." The trial court held this to be true, and we agree with that finding. Neither can it be considered temporary or one which would recede of its own volition. It was, we believe, permanent and complete. It would, in fact, still be extended that far except for the action of the Corps of Engineers in moving the channel westward once more. Under such circumstances, the bed of the river included the area now in issue. *See Solomon v. City of Sioux City,* 243 Iowa 634, 638, 51 N.W. 2d 472, 475 (1952).

Consequently, we hold the State holds title to the area in question unless the terms of the compact dictate a contrary result.

III. Both parties rely on the compact as authority. However, Mrs. Simmons claims far too much for it. She argues, in effect, that title to land ceded by one state to another would thereafter *always* be determined under the law of the ceding state. We do not believe this is what the compact said or what it meant. The compact merely established a permanent boundary and directed that all titles, mortgages, or liens "good in" the ceding state *on that date* must be accepted as "good in" the other state. It did not say, nor did it suggest, that subsequent events should be considered and decided under the law of the ceding state. On the contrary, it is clear the compact intended no such result. This is really the

significance of the distinction made in *Nebraska v. Iowa,* 406 U.S. at 122, 92 S.Ct. at —, 31 L.Ed. 2d at 738, where the court said:

> The Special Master construed the word "cedes" . . . as meant by the States to describe all areas formed *before* [the compact date], regardless of their location with reference to the original boundary, whose "[t]itles, mortgages, and other liens" were, at the date of the Compact, "good in" the ceding State, and ruled that . . . the other State is bound to recognize such "[t]itles, mortgages, and other liens" to be "good in" its State and not to claim ownership in itself. (Emphasis added.)

Later (406 U.S. at 124, 92 S.Ct. at —, 31 L.Ed. 2d at 739) the Court said:

> The Special Master recommended that as to areas formed *before* [the compact date], §§ 2 and 3 should be construed as limiting the State of Iowa to contesting with private litigants in state or federal courts the question whether the private claimants can prove title "good in Nebraska," and when private litigants prove such title, as obliging Iowa not to interpose Iowa's doctrine of state ownership as defeating such title. (Emphasis added.)

Stated otherwise, the proper interpretation of the compact is that titles (and liens) good in the ceding state on the compact date must be recognized and enforced as good in the other state. However, as to events occurring after the compact date, the law of the state in which the land lies controls. This is the import of *Tyson v. Iowa,* 283 F. 2d at 807, a case involving this same compact, where the court said:

> Some contention is made that the State [of Iowa's] title to the river bed is confined to the bed as it existed at the time of the compact. There is

> no support for such contention. The quotation from the Wilcox case, supra, [Wilcox v. Pinney, 250 Iowa 1378, 98 N. W. 2d 720 (1959)] clearly establishes that under Iowa law when the river moves over an owner's land and gradually destroys it completely, the title to the shifting river bed passes from the owner of the land to the State.

The quotation from *Wilcox v. Pinney* referred to by the *Tyson* court has been previously set out in this opinion. *Tyson* was cited with approval in *Nebraska v. Iowa,* 406 U. S. at 126, 91 S. Ct. at —, 31 L. Ed. 2d at 740.

We hold the State has established good title to the disputed area and that the decree of the trial court should be affirmed.

IV. Several other issues demand brief discussion. Appellant filed a counterclaim asking damages for trespass, interference with the use and enjoyment of her property, and other matters. She moved for trial by jury on all issues. The trial court refused this demand and split the issues by an order which contained the following language:

> The Court finds the plaintiff's principal case is a quiet title action which issue is an action in equity to be tried to the Court. The Court finds that at this time the defendants have filed a counterclaim requesting damages which is a matter of law, and if the parties desire, can be tried to a jury.
>
> The Court, being fully advised in the premises, finds that the plaintiff's principal case as to the issue of title, for the convenience of the Court and all parties, should be tried to the Court and should be tried first. After that issue is disposed of, the Court can then, if the issue is still relevant, try the question of defendant's counterclaim and damages to a jury.

This was not error. The authorities cited by appellant do not help her but, on the contrary, offer support for the trial court's order. *See Morningstar v. Myers,* 255 N. W. 2d 159, 161 (Iowa 1977).

As noted in *Morningstar,* our rules provide for splitting the issues where some are triable at law and some in equity. Trial of the equitable issues first is the rule rather than the exception. In *Morningstar,* we held there was compelling reason to try the law issues first because that course would likely dispose of the whole case. That is not true here, and the trial court properly exercised its discretion in determining the order of trial.

V. Mrs. Simmons insists the State is precluded from asserting its claim because of the default of Gerald Jauron. Jauron, an employee of the Iowa Conservation Commission, was a defendant in the counterclaim action. He failed to appear or defend, and judgment by default was entered against him.

We do not see how Jauron's default can prejudice the State. He was not authorized to act for the State, and there was no privity between him and his employer which renders a judgment against him res adjudicata against the State.

Without extended discussion, we conclude none of the authorities cited lend the slightest support for the result appellant seeks.

VI. We hold against Mrs. Simmons, too, on her claim the State is barred by sections 614.12 and 614.17, The Code 1977.

The State's petition was filed in 1965. The counterclaim (in which the statute of limitations was first

raised) was filed in 1977. The statutory provisions relied on by Mrs. Simmons were not applicable to this matter until a 1970 amendment to section 614.17. At that time the State's petition had been on file more than five years and the case had been continued by agreement until the United States Supreme Court decided *Nebraska v. Iowa, supra,* in 1972.

We decline to construe the 1970 amendment to defeat a claim already being litigated when the amendment was adopted. We do not believe the legislature intended any such retrospective effect.

Furthermore, the statute relied on operates only in favor of one in possession of the land. Although there is conflicting evidence on this issue, we find the record does not bear out Mrs. Simmons' claim of possession. Rather, it supports the State.

We find no merit to this argument nor to the belated reliance on section 448.16, which we find inapplicable to the circumstances now before us. The State does not seek to set aside or annul the 1954 tax deed (which we have once before found to be void. *See Council Bluffs Savings Bank v. Simmons,* 243 N. W. 2d 634, 637 (Iowa 1976), *cert. denied,* 429 U. S. 1001, 97 S. Ct. 532, 50 L. Ed. 2d 613 (1976)). The State's claim is bottomed on events which would divest her of title, no matter how valid it once was.

We mention, too, that Mrs. Simmons has abandoned any adverse possession claim and, by doing so, has abandoned, too, any reliance on section 448.16, The Code, which is an adverse possession statute.

We further find Mrs. Simmons' reliance on section 614.22 is misplaced. This is not an action to set aside, annul, or cancel a tax deed. The State's position is precisely the same whether that deed is set aside or not.

VII. Whether separately discussed or not, we have considered all the issues raised and find none of them entitles appellant to any relief. The judgment is therefore affirmed.

AFFIRMED.

## APPENDIX E

IN THE SUPREME COURT OF IOWA

No. 62628

STATE OF IOWA,

*Appellee,*

vs.

HELEN H. SIMMONS,

*Appellant.*

(Filed April 17, 1980)

O R D E R

After consideration by the court en banc, appellant's petition for rehearing in the above-captioned case is hereby overruled and denied.

Done this 17th day of April, 1980.

The Supreme Court of Iowa

By /s/ W. W. Reynoldson, Chief Justice

Copies to:

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Hon. Thomas J. Miller
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L O C A L

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## APPENDIX F

IN THE DISTRICT COURT OF IOWA
IN AND FOR HARRISON COUNTY

Equity No. 21276

STATE OF IOWA,

*Plaintiff,*

vs.

HARISON COUNTY, IOWA,
CLIFFORD SIMMONS and
HELEN SIMMONS, et al.,

*Defendants.*

* * * * *

HELEN SIMMONS,

*Third Party Plaintiff,*

vs.

STATE OF IOWA, STATE CONCERVATION COMMISSION OF IOWA and GERALD JAURON,

*Third Party Defendants.*

AMENDMENT TO ANSWER AND COUNTERCLAIM

---

I

AMENDMENT TO ANSWER

Comes now the defendants, Clifford Simmons and Helen Simmons, and in answer to the amendment to the plaintiff's petition, states:

1. That these defendants deny that the described real property is an abandoned channel of the Missouri

River lying before the former ordinary high water mark of the river and within the State of Iowa and islands formed therein, together with accretions thereto, but affirmatively allege that said real property was Nebraska land prior to the re-channelization of the river by the United States Corps of Engineers under an order of the United States District Court of Nebraska, and that the State of Iowa has no interest whatsoever in said real property.

WHEREFORE, these defendants pray that the plaintiff's petition be dismissed at the plaintiff's cost.

II

COUNTERCLAIM

Comes now defendant, Helen Simmons, and for her counterclaim as third party plaintiff vs. third party defendants, states:

1. That she is a resident of Omaha, Douglas County, Nebraska.

2. That Clifford L. Simmons, defendant herein, was her husband, but is now deceased, and that she, as surviving joint tenant, is the owner of any and all interest Clifford L. Simmons had in the property in question.

3. That she is the record owner in fee simple absolute of approximately 300 acres of land and water claimed by the State of Iowa, holding record title by deeds of conveyance issued her in 1954 by Harrison County, Iowa, to Lots 1, 2, 3, 4, and 5, the SE¼ NE¼, and the N½ of the SE¼ of Section 12, Township 78, Range 46 and accretions thereto; that portion of Lot 3,

Section 7, Township 78, Range 45 and accretions thereto, lying beneath the high bank of the California Bend; and that portion of the E½ of the bed of the Missouri River, known as the California Cutoff, located in Section 12, Township 78, Range 46, all in Harrison County, Iowa, which property is included within the metes and bounds description of the lands claimed by the State of Iowa in its petition herein.

4. That this third party plaintiff has paid all real estate taxes on said property since the date of purchase in 1954.

5. That the State of Iowa has no ownership of or title to that portion of the bed of the Missouri River and other lands described in its petition and claimed as abandoned channel of the Missouri River lying below the former ordinary high water mark of said river, within the State of Iowa, and the islands formed therein, together with accretions thereto, as claimed in its amendment to petition filed herein on or about March 15, 1977, for the reason that said bed and lands laid entirely within the State of Nebraska, were owned by riparian owners within the State of Nebraska, were ceded to the jurisdiction of the State of Iowa by the Iowa-Nebraska Boundary Compact of 1943, approved by the United States Congress and which lands are now owned by this third party plaintiff as successor in interest to said Nebraska owners.

6. That the third party defendants have violated the terms of the Iowa-Nebraska Boundary Compact of 1943, wherein it was agreed that the private ownership of the ceded bed of the Missouri River and other ceded lands, by claiming ownership to said bed and lands.

7. That the third party defendants have violated this third party plaintiff's property rights under the United States Constitution, Amendment XIV; and under the Constitution of the State of Iowa, Article I, by depriving her of the use and profits and enjoyment of her property; that the State of Iowa, State Conservation Commission, its officers, agents and employees, have continuously trespassed upon and occupied the third party plaintiff's property and have deprived this third party plaintiff the use and enjoyment of said property from 1956 to the present time.

8. That the actions of the third party defendants has been willful, wanton and reckless and a complete disregard to the rights of this third party plaintiff.

9. That the third party defendants have further violated this third party plaintiff's property rights under the Fourteenth Amendment of the United States Constitution, under Article I of the Iowa Constitution, under the Federal Civil Rights Act, 42 U. S. Code, Section 1983, 1985, by enjoining her, her agents, employees and family from the use, profits and enjoyment of the property described, said temporary injunction being obtained in the year of 1967.

10. That the State of Iowa has slandered and clouded the title of this third party plaintiff to her real property by causing to be recorded on June 18, 1964 in the Office of the County Recorder of Harrison County, Iowa, a deed from the Peterson Trust of Pottawattamie County, Iowa, purporting to convey to the State of Iowa certain lands in Section 12, Township 78, Range 46, Har-

rison County, Iowa, to which this third party plaintiff has held record title since 1954.

11. That the State of Iowa has violated this third party plaintiff's rights to her property and to equal protection of the law and to due process of law guaranteed her by the Fourteenth Amendment of the United States Constitution, by specifically failing to prove its claim of title to her property and by failing to assert its claim within the time allowed under the Iowa Marketable Title Act, being Sections 614.17 and 614.22 of the Code of Iowa.

12. That the State of Iowa entered into an agreement and exchanged conveyances of approximately 115 acres of land located in Sections 21, 22, 27 and 34, Township 80, Range 45, Harrison County, Iowa, with individuals, namely, Robert A. Peterson, Jimmy D. Peterson and Raymond G. Peterson, Jr., said conveyances recorded on May 28, 1964 in Book 476, Pages 600 and 601 in the Office of the County Recorder of Harrison County, Iowa, which property was exchanged for land owned by the Peterson Trust of Pottawattamie County, Iowa, and conveyed to the State of Iowa with Robert A. Peterson and Richard W. Peterson as trustees by deed recorded on June 18, 1964 in Book 476, Page 603 of the County Recorder of Harrison County, Iowa; that the land conveyed by the Peterson Trust is located in Section 7, Township 78, Range 45, Harrison County, Iowa, and is contiguous to and identical to the land owned by this third party plaintiff. That this action of the State of Iowa discriminated against this third party plaintiff in that the State of Iowa never offered to exchange identical land with the third party plaintiff, but instead brought this suit claiming ownership in the State of Iowa. That said action by the State of Iowa, and its officers and

employees, is discriminatory, wanton and willful and is contrary to the Constitutional Rights of this third party plaintiff.

13. That the third party defendant, Gerald Jauron, Missouri River Coordinator, an employee of the Iowa State Conservation Commission, acting under color of state law and authority, has destroyed and removed signs and a building posted and erected by this third party plaintiff on her property and has harrassed, threatened and intimidated this third party plaintiff and her family, all in violation of her property rights, civil rights and Constitutional rights. That said actions were willful and wanton and would constitute malfeasance of his office.

14. That the actions set out herein as alleged by the State of Iowa are contributable to the Iowa Conservation Commission, its directors and members, which is an agency of the State of Iowa.

15. That as a result of said willful and wanton acts and the malfeasance of the employees of the State of Iowa and the State Conservation Commission and Gerald Jauron and the deprivation of the use and enjoyment of her property, this third party plaintiff has suffered actual damages in the amount of $420,000.00 and for exemplary and punitive damages in the amount of $1,000,000.00, and for costs of this action.

WHEREFORE, this third party plaintiff prays for judgment against the third party defendants, and each of them, for actual damages in the amount of $420,000.00 and

for exemplary and punitive damages in the amount of $1,000,000.00 and for costs of this action.

/s/ Raymond E. Pogge

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the Attorneys of Record herein at their respective addresses disclosed on the pleadings, on 4-22, 1977.

/s/ Raymond E. Pogge

Supreme Court, U. S.
FILED
JUL 30 1980
MICHAEL RODAK, JR., CLERK

No. 79-2047

In The

# Supreme Court of the United States

October Term, 1980

HELEN H. SIMMONS,
*Petitioner,*

vs.

STATE OF IOWA,
*Respondent,*

and

STATE OF IOWA, IOWA CONSERVATION COMMISSION, and GERALD JAURON,
*Respondents on Petitioner's Counterclaim.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA**

## BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether the Iowa-Nebraska Boundary Compact precludes the application of Iowa law to determine the ownership of river channel formed in Iowa subsequent to that Compact and whether Petitioner can assert title good in Nebraska.

2. Whether the decisions quieting title in the State of Iowa constituted a taking without just compensation and whether that issue was properly presented below.

3. Whether the Seventh Amendment can be applied directly to state trials and, if so, whether the order of trial in this case violated the Seventh Amendment.

4. Whether the decisions below violated 42 U. S. C. § 1983 and whether this issue was properly presented below.

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No. 79-2047

In The

# Supreme Court of the United States

October Term, 1980

HELEN H. SIMMONS,

*Petitioner,*

vs.

STATE OF IOWA,

*Respondent,*

and

STATE OF IOWA, IOWA CONSERVATION COMMISSION, and GERALD JAURON,

*Respondents on Petitioner's Counterclaim.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA**

## BRIEF IN OPPOSITION

## OPINIONS BELOW

The decision of the Iowa Supreme Court is reported as *State of Iowa v. Simmons,* 290 N. W. 2d 589 (Iowa 1980), and is reproduced in the appendix filed by Petitioner. That decision affirmed the decision of the Harrison County District Court in *State of Iowa v. Harrison County, Iowa, et al.,* printed in the Appendix to the Iowa Supreme Court (hereinafter cited as R.) at pages 154 to 160.

## JURISDICTION

The judgment of the Iowa Supreme Court was entered on March 19, 1980. A timely petition for rehearing was denied en banc on April 17, 1980, and the petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U. S. C. § 1257 (3).

———o———

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Portions of the Fifth, Seventh, and Fourteenth Amendments are set forth in the Petition at page 3.

Portions of the Iowa-Nebraska Boundary Compact of 1943 are set out in Petitioner's Appendix C (A. 3-4).

The Civil Rights Act, 42 U. S. C. § 1983, provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Iowa statutes of limitation which Petitioner contends should have been applied to defeat the State's claim are lengthy. These are set forth in the statutory appendix to this brief.

## STATEMENT OF THE CASE

Petitioner seeks review of a decision of the Iowa Supreme Court affirming the decision of the Harrison County District Court quieting title in the State of Iowa to an abandoned channel of the Missouri River. Although the area was in Nebraska prior to the 1943 Iowa-Nebraska Compact, all of the events by which either the State or Petitioner Simmons base claims to title occurred after the area was ceded to Iowa in 1943.

At the time of the 1943 Boundary Compact, the Missouri River was located in the Corps of Engineers' design channel. This design channel formed the agreed boundary under that Compact. The land involved in this case was transferred from the jurisdiction of Nebraska to Iowa by operation of the 1943 Compact. By 1949 the east or Iowa side of the design channel had begun to break out and flood the area in dispute. By 1954 the river had moved approximately one mile to the east and was flowing over the entire area. In 1958 and 1959 the Corps of Engineers diverted the river back into the design channel, leaving the contested area as abandoned river channel.

The State of Iowa claimed title to the abandoned channel under Iowa's doctrine of state ownership of riverbeds (*See,* A. 8-9). Helen Simmons, Petitioner herein (hereinafter Simmons), claimed ownership of the land by virtue of a 1954 quitclaim deed purchased after the river had moved across and destroyed the land previously existing in this area. The quitclaim deed was purchased from Harrison County, Iowa; that Iowa county's claim to the property was based upon tax deeds issued to itself in 1938

for allegedly delinquent taxes from 1924 to 1934, when the area was concedely located in the State of Nebraska and was therefore not subject to Iowa property tax. Simmons also claimed the property by adverse possession (the Iowa Supreme Court held this claim was abandoned on appeal, A. 13). The claimed adverse possession began after the area was inundated by the river. Simmons testified that in 1954 the land was mostly covered by water (R. 107). After 1959 the claimed acts of ownership consisted of chopping down small brush, planting vegetables, fishing, and hunting (R. 108). Simmons' own testimony confirmed the State's testimony that the State was claiming the land. She testified, "Well, as soon as the water had cleared out enough, we would post signs on our land at whatever point the State of Iowa had posted a sign." (R. 109). Simmons also specifically testified that she claimed adverse possession under the laws of the State of Iowa (R. 114).

The Harrison County District Court held that the Missouri River's movements between 1949 and 1954 completely destroyed the land which prior to the Compact was in Nebraska (R. 157). The land in question, the court held, was part of the bed of the Missouri River in 1954 (*Id.*). The Court found that the land was abandoned channel which under Iowa law belonged to the State (R. 157-158).

On appeal, the Iowa Supreme Court affirmed, holding that events subsequent to the 1943 Boundary Compact would be governed by the law of the state in which the land lies (A. 10); that the land which had once been in Nebraska was lost by erosion (A. 8-9); and that the area in question had become the bed of the river subsequent to 1943 (A. 8-9) and therefore, under Iowa law, is the prop-

erty of the State. As to Simmons' claim that certain statutes of limitation barred the State's action, the Court held that the cited chapter 614 provisions, made applicable by a 1970 statutory amendment, should not be construed to apply retrospectively to this lawsuit filed in 1965[1] (A. 12-13). The Court also held that the record did not support Simmons' claim of possession of the land, a prerequisite to application of the statute (A. 13). The Court rejected Simmons' "belated reliance" on section 448.16, Iowa Code, which bars certain claims adverse to tax deeds, because "The State's claim is bottomed on events which would divest her of title, no matter how valid it once was." (A. 13). The Court also stated that Simmons had abandoned her adverse possession claim, which also precluded her from relying on section 448.16, Iowa Code (A. 13).

The Iowa Supreme Court also held that the District Court properly exercised its discretion in determining to try the equitable issues raised by the quiet title action before the law issues raised by Simmons' 1977 Amendment to Answer and Counterclaim—namely damages for trespass and interference with the use and enjoyment of her property (A. 11-12).

———o———

1 The suit was continued pending the outcome of *Nebraska v. Iowa*, 406 U. S. 117 (1972), and was subsequently delayed by extensive pretrial litigation.

## SUMMARY OF ARGUMENT

Respondents contend that the Iowa courts properly applied the law of Iowa to determine the legal consequences of river movements from 1949 to 1954 to property located within the boundaries of Iowa even though the area in question was in Nebraska prior to the 1943 Compact. This is consistent with the decision of this Court in *Nebraska v. Iowa,* 406 U. S. 117, 122, 125-126 (1972), final decree, 409 U. S. 285, 287-288 (1973), that Iowa law would govern questions of ownership of land formed after 1943 within the boundaries of the State of Iowa. Petitioner has no claim of Nebraska record title but instead claims by a 1954 quitclaim deed from Harrison County, Iowa, and by adverse possession dating from 1959 under Iowa law and not under the law of Nebraska. Not only does Petitioner have no valid claim of title good in Nebraska but also the Iowa Supreme Court, on another issue, found that the record did not support Simmons' claim of possession and held that Simmons had abandoned her claim of adverse possession in that court. Thus adequate and independent state grounds exist to deny Petitioner's claim of ownership.

Petitioners' contentions that the decision of the Iowa Supreme Court constitutes a taking without just compensation and violates 42 U. S. C. § 1983 raise no issues beyond those concerning interpretation of the compact. These issues were not properly presented to the Iowa Supreme Court. Again independent and adequate state grounds exist rendering resolution of any federal questions unnecessary.

Petitioner contends that the order of trial in the Iowa District Court violated the Seventh Amendment by denying her a jury trial. The Seventh Amendment does not apply to this state court trial. Petitioner has made no argument that the Iowa law regarding jury trials denied her due process of law. This question is without merit.

---

## ARGUMENT

### I. The decisions below do not misconstrue the Iowa-Nebraska Boundary Compact of 1943.

The Iowa Supreme Court held that, as to the effect on titles of river movements subsequent to 1943, Iowa law applies equally to all lands within the jurisdiction of Iowa, including land ceded by Nebraska. No attempt was made by the State of Iowa to dispute the validity of any Nebraska title. The State merely asserted, and the Iowa courts held, that the erosion of land in this area from 1949 to 1954 caused title to the river bed to pass to the State of Iowa (A. 8-9). Under Iowa law such erosion by the river divests the original owner of title. *Wilcox v. Pinney,* 250 Iowa 1378, 1382-83, 98 N. W. 2d 720, 723 (1959); *Tyson v. Iowa,* 283 F. 2d 802, 807 (8 Cir. 1960).

The application of Iowa law to events occurring in areas within the jurisdiction of Iowa after 1943 is clearly consistent with the Iowa-Nebraska Compact as construed by this Court in *Nebraska v. Iowa,* 406 U. S. 117 (1972), final decree at 409 U. S. 285 (1973). The Iowa Supreme Court noted that *Nebraska v. Iowa,* 406 U. S. at 122, 124,

distinguished between areas formed before and areas formed after 1943 in concluding that Iowa could not apply its doctrine of state ownership to defeat good Nebraska title to ceded land formed before that date (A. 9-10). Since this abandoned channel was created by events which occurred after 1943, Iowa clearly may apply its doctrine of state ownership to this land.

The conclusion of the Iowa courts that the law of Iowa controls events occurring within Iowa after 1943 is also supported by this Court's conclusion in *Nebraska v. Iowa,* 406 U. S. at 125-126, that Iowa law governs whether or not additions to Nebraska riparian land which extend across the Iowa boundary would pass to the riparian owner as accretion. Nebraska had asserted that Nebraska law should govern such additions to Nebraska riparian land, even though the additional land was located within Iowa, because the right to accretion was an incident of the Nebraska riparian owner's property rights. That contention was specifically rejected by this Court, which cited with approval *Tyson v. Iowa,* 283 F. 2d 802 (8 Cir. 1960), applying Iowa's law of state ownership to determine ownership of an island formed after 1943 on the Iowa side of the boundary. This Court's decision clearly confirmed the Iowa Supreme Court's choice of law for this case:

> The Court of Appeals for the Eighth Circuit held that the ownership of the island should be determined by the law of the State in which the land was situated, that is, by the law of Iowa, since the island was on the Iowa side of the Compact boundary. The Court of Appeals expressly rejected the same contention urged upon us by Nebraska, holding, in agreement with the District Court in the case, that "the Nebraska law of accretion did not operate to create riparian

> rights within the territorial limits of Iowa." 283 F. 2d at 811. Hence, whether the Nebraska riparian owner has title to the accretions that cross the boundary into Iowa is determined by Iowa law. Nebraska argues that Tyson was wrongly decided. We do not agree.

406 U. S. at 126. Thus, this Court squarely held in *Nebraska v. Iowa,* that Iowa law governs events occurring within the jurisdiction of Iowa after the compact date. *See Nebraska v. Iowa,* 409 U. S. 285, 287-288 (1973) (paragraphs 11 and 12 of final decree).

Even if this issue remained open for resolution after *Nebraska v. Iowa,* Petitioner cannot truly claim that she has good Nebraska title or that her title was divested by Iowa law. Petitioner's claim of record title is based on a Harrison County, *Iowa,* quitclaim deed.[2] She has no Nebraska record title. Furthermore, the Iowa quitclaim deed was purchased in 1954, eleven years after the compact date and after the existing land was eroded away and submerged by the river. Petitioner testified that the land was mostly under water at that time (R. 107).

Petitioner's only claim to Nebraska title is that she acquired such Nebraska title by adverse possession from Nebraska titleholders. Yet Petitioner testified that she

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2 A quitclaim deed conveys only the interest of the grantor. *Mack v. Tredway,* 244 Iowa 240, 246-47, 56 N. W. 2d 678, 681 (1953). Harrison County's claim of title was by tax deed to itself in 1938, when the area was concededly in Nebraska. (Brief of Appellant at 13.) Therefore the land was not subject to taxation by Harrison County, Iowa. As the Iowa Supreme Court noted in this case, the 1954 tax deed to Simmons had been found void in a prior case. (A. 13 citing *Council Bluffs Savings Bank v. Simmons,* 243 N. W. 2d 634, 637 (Iowa 1976).)

claimed adverse possession *under Iowa law* (R. 114) and that her family first went on the land in 1959 (Brief of Appellant at 14-15), well after the land had been ceded to Iowa. The Iowa Supreme Court has specifically held that a person cannot adversely possess river beds or banks of navigable rivers against the State because the State holds title for the public. *Board of Park Comm'rs v. Taylor,* 133 Iowa 453, 464-65, 108 N. W. 927, 931 (1906). Clearly Petitioner cannot base her claim of ownership on Iowa's law of adverse possession and yet contend that, under *Nebraska v. Iowa,* Iowa's doctrines of state ownership are not applicable, especially when the land had become riverbed and thus state property before Petitioner obtained any alleged claim to the land.

Furthermore, Petitioner raised no issues on appeal to the Iowa Supreme Court regarding her claim of adverse possession although that court's review of this equity case was de novo. The Iowa Supreme Court concluded that Petitioner abandoned any adverse possession claim (A. 13). On a separate issue, the Iowa Supreme Court concluded that the record did not support Petitioner's claim of possession of the property in question (A. 13). Thus there are adequate and independent state grounds for denying Petitioner's claim thereby precluding a grant of certiorari on this issue. *Orr v. Orr,* 440 U. S. 268, 275-76 (1979).

The facts of this case clearly establish that Petitioner has no claim to good Nebraska title as of the compact date and therefore has no basis on which to assert any perceived violation of the Iowa-Nebraska Compact of 1943.

The Iowa Supreme Court's construction of the Iowa-Nebraska Compact is clearly correct. This Court has previously decided that Iowa law governs as to events occurring within the boundary of Iowa after 1943. *Nebraska v. Iowa,* 406 U. S. at 126. There is no reason for this Court to re-examine this issue at this time.

## II. Petitioner cannot here assert that the decision of the Iowa Supreme Court constituted a taking of property in violation of the Federal Constitution.

Petitioner's takings argument is merely a repetition of her claim that the Iowa court misconstrued the Iowa-Nebraska Compact. On appeal to the Iowa Supreme Court (Brief of Appellant at 25) and in her petition here (Petition at 20), Petitioner has merely asserted that the allegedly erroneous interpretation of the Compact is a taking. Rule 14(a)(3), Iowa Rules of Appellate Procedure, Iowa Code, requires that an appellant's brief contain a statement of issues presented for review and specifically states, "Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of the issue." Since Petitioner did not state the takings issue as an issue for review (Brief of Appellant at 1-3) nor argued this issue, it was not properly presented for review in the Iowa Supreme Court. The Iowa Supreme Court did not discuss any taking question and merely stated that it had considered all issues raised and found none entitled Petitioner to relief (A. 14). Simmons concedes that the Iowa court did not rule on the question (Petition at 8-9). Certiorari jurisdiction under 28 U. S. C. § 1257(3) does not exist absent a final decision in the highest state court on the issue in question. *Street v.*

*New York,* 394 U. S. 576, 581-82 (1969); *Cf. Beck v. Alabama,* — U. S. —, 48 U. S. L. W. 4801, 4802-4803, n. 6 (June 20, 1980) (challenge to constitutionality of death penalty statute considered although not briefed in Alabama Supreme Court where Respondent State and Petitioner both claimed state court had fully considered the issue).

Even if the taking issue had been properly presented to and resolved by the Iowa Supreme Court, Simmons' argument raises no issues different from the first question presented and, therefore, should not be a basis for the grant of certiorari.

## III. The Iowa court's construction of Iowa's statutes of limitation raise no issues cognizable in this Court.

The petition for certiorari alleges on page 21 that the Iowa Supreme Court's failure to apply certain Iowa statutes of limitation to defeat the State's claim deprives Petitioner of the equal protection of the law. This Court should not entertain this question because it was not presented to the Iowa Supreme Court on review of the District Court's similar ruling (Brief of Appellant at 1-3), it is not within the questions presented in this Court for review (Petition at 3-4), and the contention of Petitioner is without merit.

The Iowa Supreme Court refused to apply sections 614.12 and 614.17, Iowa Code, 1977, here because the statutes of limitation in question were not applicable until amendment in 1970, more than five years after the State's petition was filed (A. 12-13). The Iowa court's construc-

tion of the 1970 amendment as not having retrospective effect to pending litigation is binding on this Court. *Mullaney v. Wilbur,* 421 U. S. 684, 691 (1975). The Court also found that the record did not support Petitioner's claim of possession of the land, a condition precedent to operation of the statute (A. 13). Clearly the Court had a rational basis for declining to apply this statute of limitation to defeat the State's claim.

The Iowa Supreme Court also properly rejected Petitioner's argument that section 448.16, Iowa Code, barred the State's claim. That statute bars claims adverse to tax titles if such claims are not filed within a specified time period. The Iowa Court found this statute of limitation inapplicable because the State's claim was based on river movements subsequent to the purported tax sale which would divest Simmons of title, even if such title had once been valid (A. 13). The Court also noted that, since section 448.16 is an adverse possession statute, Petitioner, by abandoning her adverse possession claim, abandoned her reliance on that statute (A. 13).

The Iowa court's construction and application of these statutes of limitation clearly have a rational basis. There is no merit to Petitioner's contention that this decision violates the Equal Protection Clause of the Fourteenth Amendment. Petitioner's failure to raise the equal protection issue as a question presented and her failure to provide any argument to support this contention illustrate that resolution of this issue by this Court would serve no significant purpose.

## IV. The Iowa Courts' decisions allowing trial first of the quiet title action to the Court did not violate the Seventh Amendment.

Petitioner contends the trial court's decision to first try the equitable quiet title issues raised by the petition and answer violated the Seventh Amendment. The legal issues relating to Petitioner's claims for trespass damages were first raised by counterclaim filed in 1977, twelve years after suit was filed. The trial court held the issue of title should be tried first. The Iowa Supreme Court held this was a proper exercise of the trial court's discretion under Iowa law (A. 11-12).

The Seventh Amendment is not applicable to the States. *Minneapolis & St. L. R. R. v. Bombolis,* 241 U. S. 211, 217 (1916); *Woods v. Holy Cross Hosp.,* 591 F. 2d 1164, 1171, n. 12 (5 Cir. 1979). See also *Alexander v. Virginia,* 413 U. S. 836 (1973) (per curiam) (trial by jury not constitutionally required in state civil proceeding to adjudge obscenity). That amendment has not been incorporated into the Due Process Clause of the Fourteenth Amendment. Since Petitioner alleges only a violation of the Seventh Amendment here, she cannot now contend that trying the equitable issues first denied her due process. However, Respondent would briefly note that the language and content of the Seventh Amendment militate against its application to states through incorporation into the Due Process Clause of the Fourteenth Amendment. The Seventh Amendment states as follows:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

The language used clearly limits its application to "any Court of the United States"—i. e., federal courts. This contrasts markedly with the Sixth Amendment which states, "In all criminal prosecutions, the accused shall enjoy the right to a speedly and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . ." The twenty-dollar threshold for applicability of the right to trial by jury would have much more profound impact on state courts than on federal courts whose jurisdiction is limited to that provided by Congress. Application of the Seventh Amendment to the states would prevent experimentation with small claims courts and other means of providing speedy and simple adjudication of legal issues. It would also be likely that incorporation of the Seventh Amendment would present so many hard cases in the context of the multitude of actions available in state courts that judicial construction of the right to jury trial available in federal courts would be weakened.

The Iowa Courts properly applied the law of Iowa in determining to try the equitable action first.

## V. Petitioner's contention that the Iowa Supreme Court decision constitutes a violation of the Civil Rights Act, 42 U. S. C. § 1983, is without merit.

Petitioner contends that the decision of the Iowa Supreme Court divested her of title in violation of 42 U. S. C. § 1983. Again Petitioner fails to develop this argument in the petition here (Petition at 21). Petitioner did not raise this question as a separate issue on appeal to the Iowa Supreme Court but instead merely inserted this conclusion in her brief as part of the argument concerning interpretation

of the Compact (Brief of Appellant at 25). Petitioner concedes that the Iowa Supreme Court did not rule on the question (Petition at 7-8). The only violation of 42 U. S. C. § 1983 alleged in the pleadings concerned the grant of a temporary injunction (A. 19). Petitioner's contention that 42 U. S. C. § 1983 was violated does not properly present any issue for consideration by this Court since Petitioner has failed to present information necessary to an understanding of the point asserted. Rules of the United States Supreme Court, Rule 21.5. Either Petitioner seeks to utilize this as a broad question, allowing her to raise any constitutional issue she may later decide to argue, or this theory is merely repetitious of questions one to three since 42 U. S. C. § 1983 would not provide any greater remedy than would reversal under any of the specific questions presented.

## CONCLUSION

For all of the above stated reasons, Respondents State of Iowa, Iowa Conservation Commission, and Gerald Jauron respectfully request this Court to deny the Petition for a Writ of Certiorari to the Iowa Supreme Court.

Respectfully submitted,

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## STATUTORY APPENDIX

Section 448.3, Iowa Code, 1977, provides:

> 448.3 *Execution and effect of deed.* The deed shall be signed by the treasurer as such, and acknowledged by him before some officer authorized to take acknowledgments, and when substantially thus executed and recorded in the proper record in the office of the recorder of the county in which the property is situated, shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed, subject to all restrictive covenants, resulting from prior conveyances in the chain of title to the former owner, and all the right, title, interest, and claim of the state and county thereto.

Section 448.15, Iowa Code, 1977, provides:

> 448.15 *Affidavit by tax-title holder.* After two years from the issuance and recording of a tax deed or an instrument purporting to be a tax deed issued by a county treasurer of this state, the then owner or holder of such title or purported title may file with the county recorder of the county in which such real estate is located an affidavit substantially in the following form:
>
> State of Iowa, }<br>
> ..... County. } ss.
>
> I, ....., being first duly sworn, on oath depose and say that on ..... (date) the county treasurer issued a tax deed to ..... (grantee) for the following described real estate:
>
> .....
> .....;
>
> that said tax deed was filed for record in the office of the county recorder of ..... county, Iowa, on ..... (date), and appears in the records of that office in ..... county as recorded in Book .....

Page ..... of the ..... Records; and that ..... is now in possession of such real estate and claims title to the same by virtue of such tax deed, or such purported tax title.

Any person claiming any right, title, or interest in or to such real estate adverse to the title or purported title by virtue of such tax deed referred to herein shall file a claim of the same with the recorder of the county wherein such real estate is located, within one hundred twenty days after the filing of this affidavit, such claim to set forth the nature thereof, also the time and manner in which such interest was acquired.

.....

Subscribed and sworn to before me this ..... day of ....., 19.....

.....

Notary Public in and for ..... County, Iowa.

Section 448.16, Iowa Code, 1977, provides:

448.16 *Claims adverse to tax title barred.* When such affidavit is filed it shall be notice to all persons, and any person claiming any right, title, or interest in or to such real estate adverse to the title or purported title by virtue of such tax deed hereinabove referred to, shall file a claim of the same with the county recorder of the county in which such real estate is located within one hundred twenty days after the filing of such affidavit, which claim shall set forth the nature thereof, the time when and the manner in which such interest was acquired.

At the expiration of said period of one hundred twenty days, if no such claim has been filed, all persons shall thereafter be forever barred and estopped from having or claiming any right, title, or interest in such real estate adverse to the tax title or purported tax title, and no action shall thereafter be brought to

recover such real estate, and the then tax-title owner or owner of the purported tax title shall also have acquired title to such real estate by adverse possession.

Section 614.1 (5), Iowa Code, 1977, provides:

5. *Written contracts—judgments of courts not of record—recovery of real property.* Those founded on written contracts, or on judgments of any courts except those provided for in the next subsection, and those brought for the recovery of real property, within ten years.

Section 614.17, Iowa Code, 1977, provides:

614.17 *Claims to real estate antedating 1960.* No action based upon any claim arising or existing prior to January 1, 1960, shall be maintained, either at law or in equity, in any court to recover any real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession, when such holder of the record title and his grantors immediate or remote are shown by the record to have held chain of title to said real estate, since January 1, 1960, unless such claimant, by himself, or by his attorney or agent, or if he be a minor or under legal disability, by his guardian, trustee, or either parent shall within one year from and after July 1, 1970, file in the office of the recorder of deeds of the county wherein such real estate is situated, a statement in writing, which shall be duly acknowledged, definitely describing the real estate involved, the nature and extent of the right or interest claimed, and stating the facts upon which the same is based.

For the purposes of this and sections 614.18 to 614.20 any person who holds title to real estate by will or descent from any person who held the title of record to such real estate at the date of his death or who holds title by decree or order of any court, or under any tax deed, trustee's, referee's, guardian's,

executor's, administrator's, receiver's, assignee's, master's in chancery, or sheriff's deed, shall be deemed to hold chain of title the same as though holding by direct conveyance.

For the purposes of this section, such possession of said real estate may be shown of record by affidavits showing such possession, and when said affidavits have been filed and recorded, it shall be the duty of the recorder to enter upon the margin of said record, a certificate to the effect that said affidavits were filed by the owner in possession, as named in said affidavits, or by his attorney in fact, as shown by the records and in like manner, such affidavits may be filed and recorded where any action was barred on any claim by this section as in force prior to July 1, 1970.

Section 614.20, Iowa Code, 1977, provides:

614.20 *Limitation on Act.* Provided, however, that nothing contained in sections 614.17 to 614.19 shall be construed as limiting or extending the time within which actions by a spouse to recover dower or distributive share in real estate within this state may be brought or maintained under the provisions of section 614.15, or as limiting or extending the time within which actions may be brought or maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate under the provisions of section 614.21, and provided further, that sections 614.17 to 614.19 should in no case revive or permit an action to be brought or maintained upon any claim or cause of action which is barred by any statute which is in force prior to July 1, 1970; provided that nothing contained in sections 614.17 to 614.19 shall affect pending litigation.

Section 614.22, Iowa Code, 1977, provides:

614.22 *Action affecting ancient deeds.* No action shall be maintained to set aside, cancel, annul, declare

void or invalid, or to redeem from any tax deed, guardian's deed, executor's deed, administrator's deed, receiver's deed, referee's deed, assignee's deed, sheriff's deed which shall have been recorded in the office of the recorder of the county or counties in this state in which the land described in such deed is situated prior to January 1, 1960, unless such action shall be commenced prior to January 1, 1971, and if no action to set aside, cancel, annul, declare void or invalid, or to redeem from any such deed shall be commenced prior to January 1, 1971, then such deed and all the proceedings upon which the same is based shall be conclusively presumed to have been in all things valid and unimpeachable and effective to convey title according to the purport thereof, without exception for infancy, mental illness, absence from the state, or other disability or cause; provided that this and section 614.23 shall not apply to any real property described in any such deed which is not on July 1, 1970, in the possession of those claiming title under such deed.